

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA.

In the matter of an Appeal in terms of Section 31DD of the Industrial Dispute Act, read together with Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

SC/Appeal / 18/ 2012
SC /HC/ LA 30/2010
BADU/HC/166/2006/Appeal
L.T Badulla LT/5/17535/1998

U.L Jaufer
No. 334 Peradeniya Road,
Kandy.

APPLICANT

Vs.

1. Foster Parents Plan International
No. 50/5, Siripa Road
Colombo 05.
2. Ricardo Gomez
No.50/5, Siripa Road
Colombo 05.

RESPONDENTS

AND BETWEEN

U.L Jaufer
No.334, Peradeniya Road,
Kandy.

APPLICANT -APPELLANT

Vs.

1. Foster Parents Plan International
No.50/5, Siripa Road,
Colombo 05.
2. Ricardo Gomez
No.50/5, Siripa Road
Colombo 05.

RESPONDENTS – RESPONDENTS

AND NOW BETWEEN

U.L. Jauffer
No.334, Peradeniya Road,
Kandy.

Deceased

Raushenara Jauffer nee Farouk
No.106/18 Waidya Road,
Dehiwela

APPLICANT - APPELLANT -
APPELLANT

Vs.

1. Foster Parents Plan International
No.50/5, Siripa Road
Colombo 05.

Presently of
No.110, Park Road,
Colombo 05.

2. Ricardo Gomez
No.50/5, Siripa Road
Colombo 05.

Presently of
No.162 3/1, Nawala Road,
Nugegoda.

RESPONDENTS -
RESPONDENTS - RESPONDENTS

U.L. Jauffer v Foster Parents Plan International and Others
Case No. SC/Appeal/18/ 2012

Before: Janak De Silva J.

Dr Sobhitha Rajakaruna J.

Menaka Wijesundera J.

Counsel: Murshid Maharoof with Shoaib Ahamed & Ishafan Uvais for the Applicant -
Appellant- Appellant.

Jivan Goonetillake for the Respondents-Respondents-Respondents.

Written Submissions: Applicant – Appellant – Appellant - 13 March 2026
Respondent -Respondent -Respondent - 25 February 2026

Argued on: 27 January 2026

Decided on: 24 September 2026

Judgement

Dr Sobhitha Rajakaruna, J.

The Applicant-Appellant-Appellant (hereinafter referred to as the ‘Appellant’) was employed by the 1st Respondent-Respondent-Respondent Organisation (hereinafter referred to as the ‘Respondent’). The 2nd Respondent maintains that he has never employed the Appellant and that the application before the Labour Tribunal cannot be maintained against him. On 31 January 1996, the Appellant tendered his letter of resignation, which was accepted by the Respondent. Thereafter, the Appellant continued to be employed by the Respondent under two successive fixed-term contracts of employment for stipulated periods. Upon the expiry of those contracts, the Respondent did not renew or extend the Appellant’s employment. Consequently, the Appellant instituted proceedings before the Labour Tribunal, *Badulla* (hereinafter referred to as the ‘Tribunal’), alleging that the Respondent had unjustly and inequitably terminated his employment.

At the inquiry before the Tribunal, the Respondent denied having terminated the Appellant's employment. Accordingly, the Appellant assumed the burden of leading evidence first. By its decision dated 6 November 2006, the Tribunal dismissed the Appellant's application, holding that the Respondent had not terminated the Appellant's services and that the employment had come to an end solely by effluxion of time upon the expiry of the fixed-term contracts.

The Appellant thereafter appealed to the Provincial High Court of the Uva Province holden in *Badulla* (hereinafter referred to as the 'High Court'). By its judgment dated 13 May 2010, the High Court affirmed the determination of the Tribunal. Being aggrieved by the said judgment, the Appellant preferred the present Appeal to this Court. Leave to Appeal was granted on the following Questions of Law:

1. Was the High Court wrong in applying the Judgment in *Y.G de Silva vs Associated News Papers of Ceylon Limited* [1978/79] 2 Sri LR 173, to the facts of this case?
2. Did the Labour Tribunal and the High Court fail to consider whether the Contracts marked 'A9' and 'A15' were intended to be acted upon as fixed term contracts?
3. In any event, did the Labour Tribunal and the High Court err in failing to consider whether the Petitioner is entitled to relief in a re-trial situation?

Overview of the Appellant's Position

The Appellant contended that he was initially appointed as the National Assistant Director of the Respondent Organisation on a permanent and pensionable basis with effect from 1 October 1991, subject only to a six-month probationary period, and that the age of retirement was sixty years. He maintained that, although he was requested to submit a letter of resignation on 31 January 1994, he did so only because he was informed that his employment would otherwise cease and that he would continue in service under a new arrangement. According to the Appellant, his resignation was therefore procured under economic duress and was not voluntary.

The Appellant submitted that, on the very same day he tendered his resignation, he was issued with a fresh appointment as the Project Coordinator on a fixed-term contract of two years without any alteration to his salary, duties, or responsibilities. He argued that no

reasonable permanent employee would voluntarily relinquish security of tenure without any corresponding benefit, and that the purported resignation and fixed-term appointment constituted a mere contrivance orchestrated by the Respondent to disguise the continuation of the existing employment relationship. In support of this contention, he relied upon the sequence of contemporaneous documents, including the acceptance of his resignation, payment of severance benefits, and issuance of the new appointment letter, all dated 31 January 1994, together with an internal memorandum dated 6 January 1994 revealing that the Respondents had already contemplated eliminating his permanent post before the alleged resignation.

The Appellant further submitted that his employment was thereafter extended through a second fixed-term contract as the Project Director, again without any material change in his duties, salary, or conditions of service. He maintained that an internal memorandum assigning him responsibilities extending beyond the expiry date of his final contract demonstrated that the Respondents themselves did not intend the fixed-term contracts to operate according to their express terms. He also relied on evidence that the Respondents had previously obtained legal advice regarding the removal of permanent employees and the introduction of temporary contracts, which, according to him, demonstrated a deliberate plan to deprive employees of permanent status.

The Appellant argued that both the Tribunal and the High Court failed to determine the threshold issue of whether the fixed-term contracts were merely an undue mechanism intended to conceal the true nature of the employment relationship. He contended that both courts improperly confined themselves to the written contracts without evaluating the surrounding circumstances and documentary evidence and the requirement to ascertain the real relationship between the parties. He further submitted that the Tribunal and the High Court misapplied the decisions in *De Silva v Associated Newspapers of Ceylon Ltd.* [1978/79] 2 Sri LR 173 and *Ceylon Plywoods Corporation v Samastha Lanka Rajya Sanstha Sevak Sangamaya* [(1992) 1 SLR 157], as those authorities concerned the legal effect of genuine contracts and voluntary retirement schemes rather than allegations that the contracts themselves were not intended to be acted upon.

The Appellant further contended that the Tribunal failed to exercise the wide powers conferred by section 31B (4) of the Industrial Disputes Act to grant just and equitable relief notwithstanding the terms of a contract of service. He maintained that both courts failed

to consider the contemporaneous documents and surrounding circumstances establishing that his permanent status had been unlawfully altered and that his resignation lacked the essential element of voluntariness.

Finally, the Appellant submitted that he was suspended shortly before the expiry of the final fixed-term contract without any valid reason and was subsequently accused of refusing to carry out unlawful instructions to terminate other employees. He maintained that no disciplinary inquiry was ever conducted and that the Respondent simply allowed the fixed-term contract to expire instead of lawfully terminating his services. Accordingly, he argued that he had, in substance, remained a permanent employee throughout, and that the purported reliance on the expiry of the fixed-term contract constituted an unlawful termination of his employment.

Respondent's Submissions in Synopsis

The Respondent submitted that the Appellant's case before the Tribunal was founded on the assertion that his resignation from permanent employment had been procured by coercion/force and that, notwithstanding the subsequent fixed-term contracts, he had remained a permanent employee whose services were unlawfully terminated on 31 January 1998. They denied these allegations and maintained that the Appellant had voluntarily resigned from his permanent employment, accepted all terminal benefits payable upon such resignation, and was thereafter re-employed under two separate fixed-term contracts, the latter of which expired by effluxion of time without any termination by the Respondent.

The Respondent contended that the Appellant failed to discharge the burden of proving that his resignation had been obtained through coercion or economic duress. They submitted that no documentary or oral evidence had been adduced to substantiate the allegation of forced resignation and that the Appellant himself had never challenged the validity of his handwritten resignation letter or protested against the payment of terminal benefits amounting to Rs. 342,166.66, which he accepted without reservation. They further argued that the Appellant did not file a replication to the Respondent's Answer, thereby leaving the material averments therein formally unchallenged.

The Respondent further submitted that the documentary evidence established a clear break between the Appellant's permanent employment and his subsequent contractual

engagements. They pointed out that the permanent employment contract was with Foster Parents Plan International Inc., a foreign entity, whereas the subsequent fixed-term contracts were entered into with the Sri Lankan office of Plan International. They also emphasised that the Appellant served under different designations, namely National Assistant Director, Project Coordinator, and Project Director, and that his remuneration under the fixed-term contracts was substantially higher than under his previous employment. According to the Respondents, these factors demonstrated that the fixed-term contracts constituted fresh and distinct contracts of employment.

The Respondent maintained that the Tribunal and the High Court correctly applied the principles laid down in the said *De Silva v Associated Newspapers of Ceylon Ltd.*, namely that a fixed-term contract terminates automatically by effluxion of time and does not amount to a termination by the employer within the meaning of section 31B of the Industrial Disputes Act. They further argued that, although section 31B (4) empowers a Labour Tribunal to grant just and equitable relief notwithstanding contractual provisions, such discretion must be exercised having regard to the particular facts of each case. In this regard, it was submitted that the Respondent organisation, being an international non-governmental organisation operating through donor-funded, project-specific programmes, necessarily relied on fixed-term contracts, the integrity of which should be preserved.

The Respondent further contended that the alleged discrepancy in the dates of the resignation-related documents did not undermine the validity of the Appellant's resignation or the subsequent contractual arrangements. According to the Respondent, the disciplinary proceedings were lawfully discontinued because they became unnecessary once the Appellant's employment came to an end by effluxion of time.

Finally, the Respondent submitted that the Appellant's reliance on authorities concerning the assessment of compensation was misplaced since no unlawful termination had occurred. The Respondent argued that, in any event, the Appellant had already received and accepted substantial terminal benefits, including a gratuity payment to which he was not legally entitled, and that the Tribunal and the High Court had therefore correctly dismissed his claim.

Evaluation

The Appellant contends that his services were unjustly and unreasonably terminated with effect from 31 January 1998. The Respondent, however, denies having terminated the Appellant's employment. The Respondent's position is that the fixed-term contract of employment entered into between the parties expired by effluxion of time on 31 January 1998. It is, therefore, the Respondent's case that the Appellant's employment came to an end not by reason of any act of termination on its part, but solely upon the expiry of the contractual period stipulated in the fixed-term contract.

It is also evident from the record that, prior to the expiry of the said contract, certain disciplinary charges had been preferred against the Appellant. However, those disciplinary proceedings were not pursued, as the fixed-term contract expired by effluxion of time before any disciplinary action could be concluded.

The central issue that arises for determination is whether the Appellant's employment came to an end solely by effluxion of time upon the expiry of the fixed-term contract or whether the Respondent's failure to continue the Appellant's employment beyond the stipulated contractual period amounted to a termination, or constructive termination, of his services.

Before addressing that issue, it is necessary to consider the circumstances surrounding the letter of resignation marked 'A6'. The Appellant contends that the said letter was procured through coercion or undue pressure. In evaluating this contention, the learned President of the Tribunal observed that the Appellant had testified that he was compelled to tender his resignation in order to secure continued employment. However, the Tribunal found that no satisfactory evidence had been adduced to substantiate that allegation. The Tribunal further observed that it emerged during the cross-examination of the Respondent's witness that the Appellant had raised no objection at the time of tendering his resignation, nor had he made any complaint thereafter alleging that the resignation had been obtained improperly. The letter of resignation marked 'A6' was accepted by the Respondent by letter marked 'A4'. Having considered the entirety of the evidence, the Tribunal concluded that the resignation was voluntary and valid.

The evidence further discloses that, following his resignation, the Appellant continued in the Respondent's employment for nearly four years under the fixed-term contracts marked

'A9' and 'A15'. It is also undisputed that the Appellant accepted a gratuity payment of Rs. 342,166.66 consequent upon the acceptance of his resignation by the Respondent. There is no evidence that the Appellant protested or reserved his rights when accepting the said payment. In these circumstances, I am of the view that the Appellant has failed to adduce sufficient evidence to establish that he was compelled, by coercion or force, to tender his resignation.

Having tendered his resignation and accepted the gratuity payment, the Appellant thereafter served under the aforesaid fixed-term contracts. I find no evidence to suggest that the Appellant was misled by the 1st Respondent or that he was unaware of the terms and conditions governing those contracts. The letter dated 17 October 1997, marked 'A8', merely sets out the duties and responsibilities to be performed by the Appellant in his capacity as the Badulla Field Office Manager. Upon a careful examination of that document, I am unable to agree with the Appellant's contention that its contents demonstrate an intention on the part of the Respondent to retain his services beyond the contractual period. Similarly, the fixed-term contract marked 'A15' contains no provision or surrounding circumstance that warrants a departure from this conclusion. On the contrary, 'A15' expressly provides that the appointment was for a fixed term of two years commencing on 1 February 1996.

The Supreme Court, affirming the rationale adopted in *De Silva v Associated Newspapers of Ceylon Ltd.*, held in *Sri Lanka Transport Board v P. D. Premasiri* (SC/APPEAL/169/2025, S.C. Minutes of 29 April 2026) that, in the circumstances of that case, the non-renewal of a fixed-term contract, in the absence of exceptional circumstances, could not be regarded as a termination of the employee's services. The question of law that arose in *Sri Lanka Transport Board v P. D. Premasiri* is substantially similar to the issue for determination in the present case, namely, whether the failure to renew a fixed-term employment contract upon its expiry amounts to a termination of services. The Supreme Court further observed that this principle may not apply where successive renewals of fixed-term contracts have given rise to an implied promise or legitimate expectation of renewal, in the absence of misconduct or inefficiency on the part of the employee.

Conclusion

The law relating to fixed-term contracts of employment has now attained considerable certainty. A distinction must always be maintained between an ordinary contract of service of an indefinite duration and a genuine fixed-term contract of employment. Under an ordinary contract of service, continuity of employment is the governing principle, and termination ordinarily requires a positive act on the part of the employer. In contrast, a fixed-term contract is entered into for a specified duration, with the mutual understanding that the employment relationship will automatically come to an end upon the expiry of the agreed period unless the parties mutually agree to renew or extend it. Consequently, the mere non-renewal of such a contract cannot, by itself, be equated with a termination of employment by the employer.

In the present era of complex economic conditions and evolving labour markets, employers, particularly those engaged in project-based, donor-funded, seasonal, or time-bound operations, often have legitimate commercial and operational reasons for engaging employees on fixed-term contracts. Such contractual arrangements have become an indispensable feature of modern employment relationships. Courts must therefore accord due recognition to the commercial purpose and legal validity of genuine fixed-term contracts by exercising caution before rewriting the bargain voluntarily entered into by the parties merely because the contractual relationship has subsequently come to an end by effluxion of time.

Nonetheless, the law must also remain vigilant against the misuse of fixed-term contracts. The repeated renewal or continuous extension of successive fixed-term contracts over a prolonged period may, depending upon the facts and circumstances of a particular case, create an implied promise, legitimate expectation, or mutual understanding that the employment would continue in the absence of misconduct, inefficiency, redundancy, or other legitimate grounds. Where the surrounding circumstances disclose that the device of successive fixed-term contracts has been employed as a means of depriving an employee of the protection afforded by labour legislation, or where the refusal to renew amounts to an unfair labour practice that is gravely prejudicial to the employee's rights, such non-renewal may, in exceptional cases, constitute a constructive termination of employment notwithstanding the formal expiry of the contract.

However, such exceptional circumstances must be established by cogent evidence. The burden rests upon the employee to demonstrate that the surrounding facts justify lifting the veil of the written contract and treating the employment relationship as one of continuing service. Mere dissatisfaction with the non-renewal of a fixed-term contract, or the existence of successive contracts without more, is insufficient to attract such a conclusion.

Applying those principles to the facts of the present Case, I find no exceptional circumstances warranting a departure from the general rule. The Appellant has failed to establish that his resignation from permanent employment was procured by coercion. In *Favourite Hanwella (Pvt) Ltd. v M. Wasantha Priyamal Fernando* (SC/APPEAL/128/2017, SC Minutes on 27 March 2026) the Supreme Court held:

“A resignation of an employee is valid only if it is voluntary and based on informed consent. Where an employee resigns under threats, coercion or intolerable pressure from the employer, the law may regard it as not constituting a genuine resignation. In such circumstances, it may instead be treated as a forced resignation, constructive dismissal or a disguised termination by the employer. Nevertheless, any claim of involuntariness must be established by cogent evidence, and the court or tribunal must evaluate the matter with the utmost care, having regard to the totality of the circumstances of the case.”

The evidence further demonstrates that, following his resignation, the Appellant voluntarily entered into two distinct fixed-term contracts, accepted the benefits payable consequent upon his resignation, and continued to serve in accordance with the express terms of those contracts. There is no material before this Court capable of establishing that the Respondent made any express or implied representation that the final contract would be renewed, or that the Appellant had acquired any legitimate expectation of continued employment beyond its stipulated duration. Nor does the evidence disclose that the Respondent employed the fixed-term contractual arrangement as a device to perpetrate an unfair labour practice or to circumvent the protections afforded by labour law.

Accordingly, the Appellant's employment came to an end solely by effluxion of time upon the expiry of the final fixed-term contract on 31 January 1998. The Respondent's decision not to renew that contract constituted neither a termination nor a constructive termination of the Appellant's services. The Supreme Court held in *Niyas Carder & others v S. A Sanduruwan Suriyaarachi* (SC/APPEAL/117/2024, SC Minutes 04 May 2026) that

constructive termination must be determined on the specific circumstances of each case and the essential inquiry is whether the employer's conduct was such as to shake the foundation of the contract of employment to the extent that the employee had no real option but to leave.

The learned President of the Tribunal correctly appreciated the evidence and applied the governing legal principles including the jurisprudence enunciated in *De Silva v Associated Newspapers of Ceylon Ltd.* The learned High Court Judge was equally correct in affirming that determination. I find no error of law in either decision warranting the intervention of this Court.

For these reasons, I answer all the Questions of Law in the negative and against the Appellant. The appeal is accordingly dismissed. In all the circumstances of this case, I make no order as to costs

Judge of the Supreme Court

Janak De Silva, J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court